

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
OSGOOD, : Docket #21cv9460
 : 1:21-cv-09460-JPC-OTW
Plaintiff, :
- against - :
CITY OF NEW YORK, et al., : New York, New York
 : March 8, 2022
Defendants. :
----- : INITIAL CASE
 : MANAGEMENT CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE ONA T. WANG
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: This is 21cv9460, Osgood v. City of New York, et al, before the Honorable Ona T. Wang. Please state your appearances for the record.

MR. BRETT KLEIN: Good morning, Your Honor, Brett Klein appearing for the plaintiff, Michael Osgood.

MS. DOMINIQUE SAINT-FORT: Good morning, Your Honor, Dominique Saint-Fort, New York City Law Department Office of Corporation Counsel for defendant.

HONORABLE ONA T. WANG (THE COURT): All right, good morning, it's a pleasure to see people in person again as we start opening up. All right, I have before you, before me, your proposed case management plan, I don't have any problem with the date, so unless anything has changed on that, I will enter the dates that are in your scheduling order.

MS. SAINT-FORT: Your Honor, as an initial matter, defendants requested a stay of discovery. I'm not sure if Your Honor is going to address that --

THE COURT: I did say that we would address that in this conference, right?

MS. SAINT-FORT: Yes.

THE COURT: Okay, that brings me to my next

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2 issue which is this case has been referred for general
3 pretrial, okay. What that means is anything that's
4 pretrial and not a dispositive motion comes to me, all
5 right? So let's try to keep that clear as well, if
6 you have other procedural issues, discovery related
7 issued, a motion to stay discovery should properly be
8 addressed to me.

9 All right, now you do have a motion to dismiss
10 briefing scheduled before Judge Cronan now, right?

11 MS. SAINT-FORT: Yes, Your Honor.

12 THE COURT: Okay, what is the fully submitted
13 date of that motion?

14 MS. SAINT-FORT: Defendant's motion is due
15 this coming Monday, the 14th of March. I believe
16 plaintiff's opposition is due April 21st. Let me be
17 clear, excuse me, Your Honor. The opposition, excuse
18 me, April 11th and defendants' reply is due April 25th.

19 THE COURT: Oh, sorry, okay, April 11th and
20 then April 25th, okay. Okay, and I mean as a general
21 matter, I don't usually, I don't usually stay
22 discovery during the pendency of a motion to dismiss,
23 right, that doesn't happen as a matter of course. And
24 is this a motion to dismiss the complaint in its
25 entirety, Ms. Saint-Fort?

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MS. SAINT-FORT: Yes, Your Honor.

THE COURT: Okay. all right, let's hear from Mr. Klein.

MR. KLEIN: Thank you, Judge. Your Honor, the, in our view we have set forth authority that in our view weighs in favor of the case proceeding on the merits, and we certainly don't want the case to be held back from proceeding towards trial. That said, we're not opposed to striking a fair balance, perhaps the parties can do paper discovery and then check back in with you in 45 days or something that Your Honor finds to be convenient and see where we are with regard to the status of any decision or proceeding with depositions at that point.

On that note, with regard to the discovery schedule in total, in general, there are potentially many depositions in this case. And so that not only will be time consuming, but costly, and I just would like to flag that I personally, now that things are opening up, I have a trial in April, a trial in June, a trial in August and so I see that impacting my ability to schedule things.

THE COURT: Yes.

MR. KLEIN: So I just wanted to be transparent

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2 about that, my scheduling potential difficulties, but
3 also open to conserving resources where necessary. I
4 think paper discovery is something that the parties
5 can do even electronically and we had already provided
6 our initial disclosures and so has the defendants, and
7 see where we stand after several weeks.

8 THE COURT: Okay. The other thing I saw in
9 your case management plan was to talk about the
10 possibility of settlement, is that still potentially
11 on the table? Because I think, I think you have a date
12 for, an earlier date for possible settlement
13 conference than would be humanly possible for Judge
14 Cronan to decide your motion to dismiss anyway. So --

15 MR. KLEIN: From plaintiff's perspective,
16 Judge, if we could be on an even playing field with the
17 City and have the documents relating to Mr. Osgood's, you
18 know, change in status, the IAB investigation, the issues
19 set forth in the complaint, I think then we can be in a
20 good position to evaluate settlement and know really
21 essentially what the City knows, weigh the strengths and
22 weaknesses and engage in meaningful talks. There were
23 preliminary discussions about it and then the City
24 submitted its pre-motion conference letter and now here we
25 are.

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So we remain open to it, but I do think an exchange of documents would be helpful to further that goal.

THE COURT: Okay. All right, any other thoughts or comments, Ms. Saint-Fort, and particularly about plaintiff's proposal of proceeding with some paper discovery during the pendency of the motion to dismiss?

MS. SAINT-FORT: It remains defendants' position that we would like discovery to be stayed in total, simply because of, we believe, I can understand opposing views but what we believe to be the strength of our motion and that it would be fully dispositive of this case. Additionally, the, even paper discovery I think in this action, just given the individuals involved, the number of individuals is potentially extensive, as plaintiff has listed in the type of discovery that he would be looking for in this particular case. And given that, we, it would be our position that discovery be stayed during the pendency of motion practice.

THE COURT: All right, I have reviewed ECF-45 and, is it 45 and 47, which were your letters regarding the Rule 12 motion and potential amendment, and it seems to me that the issues in this case really have, the issues in this case really seem to turn on the facts and on credibility. And I, you know, given the volume of discovery that you're going to

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2 be trying to get done, I don't think it would be advisable
3 to stay discovery.

4 However, as I am mindful of the burden on counsel
5 and especially with things opening up we are all much
6 busier, why don't we, I will enter the schedule as it's
7 proposed in the case management plan. Let's have counsel
8 work with each other and keep lines of communication open to
9 only do paper discovery for now, let's start with paper
10 discovery and let's look at, let's look at a date after the
11 motion is fully submitted for next status conference.

12 Now, the other thing I will do is at the end of
13 this initial case management conference, we are going to go
14 off the record briefly and I am going to have, in person
15 what I normally have, and I think Ms. Saint-Fort is probably
16 familiar with them, what I call my pre-settlement call, to
17 kind of, to explore confidentially and off the record things
18 about timing of potential settlement discussions and where
19 that might fit in, okay? So we'll put, we'll table that.

20 The other issue is about amendment. I mean, Mr.
21 Klein, is it your expectation that potentially you would be
22 amending your complaint during the pendency of the motion to
23 dismiss briefing or what's, how does the timing of that play
24 in?

25 MR. KLEIN: So, Judge, we asked for a date to

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2 amend with sufficient time for us to review the defendant's
3 motion. While we would have leave in any event, we factor
4 the timing of your scheduling order to fall in that time
5 after the motion is served. It's, it's -- we believe our
6 complaint is factually sufficient and legally sufficient,
7 but we certainly would want to have that placeholder to look
8 at their motion, if there are any additional facts or legal
9 matters that relate that need to be, that we may want to
10 add, we want to have that opportunity. But we think we have
11 all the parties at this point that we need and I would say
12 that the likelihood of amendment is 50/50 at this point.

13 THE COURT: Okay.

14 MR. KLEIN: It's not off the table, it's
15 something we thought about that may be necessary or may be
16 helpful, but --

17 THE COURT: Okay, work with each other on how
18 you want to stage that. I'd like to see if you can work
19 out timing on that. If that means that your motion to
20 dismiss briefing schedule gets extended, or if your
21 proposed amended complaint ends up getting attached to
22 your opposition, Mr. Klein, try to work those timing
23 issues out together in the first instance. And if you
24 can't, or if you have a new proposed schedule that you've
25 stipulated to, submit it to my attention, you know, you

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can file it on the docket and I will take care of that.
If there's, you know, a need to change the dates on the
briefing schedule I think that should be up to me, okay?

MR. KLEIN: Judge, if I may?

THE COURT: Yes.

MR. KLEIN: On that subject of things piling
up. So I do have two substantial summary judgment
oppositions due on April 1st. So I don't have my calendar
because I had to give my phone in downstairs, but I think
the 4/4 amendment date in the pretrial scheduling order
might be a little ambitious. If it was 4/11 with our
opposition, maybe that would be on or before that date so,
you know, if we're able to either file it, we'll either
file it on or before or as an exhibit to our motion, maybe
if we could make it that date I'd appreciate that.

THE COURT: A lot of this is hypothetical right
now since you haven't seen Ms. Saint-Fort's motion to
dismiss.

MR. KLEIN: Correct.

THE COURT: So why don't you take it in due
course. I'm not going to, you know, withhold an extension
jus for the sake of withholding an extension. I'm glad
that you fronted the issue --

MR. KLEIN: Thank you.

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2 THE COURT: And we'll take care of it if and
3 when it comes up, okay?

4 MR. KLEIN: Thank you. Understood.

5 THE COURT: Maybe we'll settle the case before
6 then, who knows.

7 The last, the last thing I wanted to address,
8 that I wanted to address before I ask you if you have
9 anything else and then we go off the record, is I see in
10 your case management plan that you do not consent to a
11 magistrate judge's jurisdiction at this time. That is
12 totally fine, but I usually put in a little plug that if
13 the parties consent I am happy to take the case for all
14 purposes and then, you know, it can move a little more
15 smoothly because you won't have this sort of back and
16 forth between whether you should be making your request to
17 the district judge or the magistrate judge, among other
18 things. But again, I also don't have any ego about, you
19 know, whether you consent or not, you know, you can do it
20 at any time, it's just once it's final there's no
21 (indiscernible). But think about that, think about whether
22 you'd like to do that at some time in the future, no
23 pressure on you but I wanted to make you aware of that and
24 let you know that I'd be happy to do that.

25 Okay, is there anything else anybody needs to

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2 address at this time on the record, Mr. Klein?

3 MR. KLEIN: Just in terms of checking back in
4 after paper discovery, will you be setting a case
5 management conference or --

6 THE COURT: Actually, yes.

7 MR. KLEIN: Okay.

8 THE COURT: That was another thing I had to do
9 was to set a date for a status conference. Anything
10 else you need to address, Ms. Saint-Fort, before we
11 set a date for our next status conference?

12 MS. SAINT-FORT: I think it's already clear
13 from what you stated, Your Honor, but I just want to
14 clarify just to make sure I'm sure that when we're
15 talking about paper discovery we're not considering
16 electronic discovery?

17 THE COURT: You know, I leave that up to the
18 two of you to try to work out because, while
19 electronic discovery can be voluminous, sometimes the
20 management of it can be not as burdensome as one
21 thinks, right? There's many assistive technologies
22 that one can do to and plans that one can put into
23 place where you can actually convey a lot of
24 information and exchange a lot of discovery without
25 the need for an attorney to touch and lay eyes on

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2 every single document and every single page.

3 So I would like, actually what's the date that
4 you have for your electronic discovery plan, protocol?
5 Oh, by April 15th, okay. So I'd like you to start
6 talking about that and thinking about whether
7 electronic discovery falls under document discovery
8 or, you know, quote-unquote, "paper discovery." I
9 guess that highlights to me that I would expect
10 document discovery to proceed with the parties to
11 determine whether and where to put the electronic and
12 ESI documents, okay? If you are, again, if you're
13 really having a hard time working this out, a joint
14 letter under my individual practices identifying the
15 dispute would be helpful and we'll, you know, we'll
16 set up a conference or I'll try to even rule on the,
17 on the letter, okay?

18 But until each of you, and particularly, Ms.
19 Saint-Fort, you have a handle on how much electronic
20 discovery is out there, how much ESI is out there, how
21 you would get your arms around it and how it would be
22 in the first instance sort of collected, segregated,
23 you know, whether you're going to use search terms or
24 some other technology assisted review to pull it
25 together, it might not be that burdensome. Easy for

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2 me to say since I'm not the one doing it, I
3 acknowledge that, but it might not be as burdensome as
4 you would think if you have a protocol in place where
5 you can claw back documents or that, you know, the
6 initial review or production can be with some caveat
7 about, you know, how, how the search has been done,
8 okay? It seems like it would be, that would be
9 something that would help both of you. So if there
10 ends up being a dispute about it that you can't
11 resolve on your own I am happy to talk about it, but
12 in the first instance I'd like you to kind of see
13 what's out there and see if you can work something out
14 that's reasonable for both of you, okay?

15 All right, let's, if we assume that the motion
16 to dismiss will be fully briefed by April 25th, let's
17 look at some time after that. So I'm thinking
18 possibly the first week of May.

19 THE CLERK: You have 11:30 on the 5th.

20 THE COURT: How is -- wait, 12 o'clock on the
21 5th or in the afternoon of the 5th? So, Mr. Klein, you
22 said you don't have your calendar handy?

23 MR. KLEIN: Yeah, I'm out of practice with
24 having my secure pass and didn't have it after being
25 in this building a thousand times. So if you want to

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2 set the 5th at 12 or whatever time is convenient for
3 counsel, you know, if there is any issue I could let
4 you know, but --

5 THE COURT: Okay, so Cinco de Mayo, 12:30 or
6 is it 12, Diane, 12:00, right?

7 THE CLERK: 12 p.m.

8 THE COURT: Okay, May 5th, 12 p.m., if that
9 turns out to be a problem for either of you once you
10 have access, full access to your calendars, just meet
11 and confer on another date or time, like later that
12 day I'm open also so if it's just a matter of timing
13 and keeping it on the same day, just propose a couple
14 of dates and we'll work it out, okay?

15 MR. KLEIN: Thank you.

16 THE COURT: All right, anything else we need
17 to do on the record?

18 MR. KLEIN: Nothing for the plaintiff, thank
19 you.

20 MS. SAINT-FORT: Nothing for defendants, Your
21 Honor.

22 THE COURT: All right, thank you very much, we
23 are adjourned. I'm going to request that the parties
24 order a copy of the transcript and share the cost.

25 (Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Osgood versus City of New York, et al., docket #21cv9460, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

CAROLE LUDWIG

Date: March 16, 2022